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AC-141-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 6<sup>th</sup> OF APRIL, 2026ARBITRATION CASE No. 141 of 2025

*SS ASSOCIATES A PARTENSHIP FIRM HAVING ITS OFFICE AND  
OTHERS*

*Versus**DILIP BUILDCON LIMITED*

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Appearance:

Shri Subhojit Seal - Advocate with Shri Yogesh Soni - Advocate for  
the petitioner No.1.

Shri Shreyas Dubey - Advocate for the respondent.

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ORDER

The present petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of arbitrator to adjudicate upon the disputes arising between the parties arising out of the purchase orders. The arbitration clause in para 17 is as under:

*"17.1. All disputes arising out of or in connection with this order including any question regarding its existence, validity or termination, shall, unless amicably settled between the parties, be finally settled by arbitration. The parties shall mutually agree and appoint a sole arbitrator. Notwithstanding to what is stated above, if the parties cannot mutually agree on arbitrator within 4 (four) weeks from the date of invocation of arbitration, then the Arbitrator shall be appointed in accordance with rule of*



*Arbitration and Conciliation Act 1996. The arbitration proceedings shall be conducted as per the Arbitration and Conciliation Act 1996, and any modifications thereto and re-enactments thereof. The seat of arbitration shall be Bhopal. The language to be used in arbitration proceedings shall be English.*

*17.2. Each party submits to the jurisdiction of courts of Bhopal for the purposes only of compelling compliance with the above arbitration provisions and for enforcement of any arbitration award made in accordance with the above provision.*

*17.3. The Purchase Order shall be governed, construed and shall take effect in accordance with the laws of India and Supplier agrees to submit to the exclusive jurisdiction of the Courts in Bhopal."*

2. Learned Counsel for the respondents has objected to the appointment of the arbitrator on two grounds. Firstly, that as per the aforesaid clause 17.1, the parties have to go for amicable settlement and if amicable settlement does not take place, then the matter has to be finally settled by arbitration. It is argued that the petitioner did not try for any amicable settlement.

3. The second objection taken is that there is criminality in the act of the petitioner in the matter and once there is criminality involved in the transaction, then arbitrator cannot be appointed.

4. Learned counsel for the petitioner refers to a letter written to the Police authorities on 28.01.2025 wherein the Police Authorities have been



called upon to investigate into the theft of materials amounting to Rs.26,750/- by the petitioner or his staff members.

5. Learned counsel for the respondents has also referred to reply to notice under Section 21 of The Act of 1996 wherein it was clearly mentioned by the respondent in its reply dated 10.10.2025 that the acts of the petitioner in the matter are tainted with Fraud, forgery, criminal breach of trust, malice, dishonest, intent to defraud and unlawfully amass money which are all offences under Bhartiya Nyaya Sahita.

6. Upon consideration of the aforesaid submissions, it is seen that so far as the objection that there has to be amicable settlement is concerned, clause 17.1 of the purchase order does not mention any particular process for amicable settlement, before which arbitration cannot start but it only mentions that the dispute shall be settled by arbitration, unless amicably settled between the parties.

7. From the correspondence going between the parties, it is clear that there cannot be any amicable settlement because the respondent has even gone to the extent of making complaint to the police authorities against the Petitioner and therefore, the hopes of amicable settlement cannot be inferred by this Court. The only barring provision of Section 77 of Act of 1996 which Bar initiation of arbitration proceedings during pendency of conciliation proceedings. Section 77 is as under :-

*" The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights. "*

8. In the present case, there is no mandatory provision in the



agreement to carry out any conciliation or amicable settlement process, and the arbitration clause is unconditional in mentioning that unless amicable settlement takes place, the dispute shall be settled by arbitration. Therefore, this objection of the respondents is discarded.

9. So far as the question of there being criminality in the act of the petitioner is concerned, no doubt that a complaint has been made by the respondent to the Station Officer, Thana Chuna Bhatti, Bhopal (M.P.) but no FIR or any other further actions seems to have been taken place on this complaint which is sent on letterhead of the respondent to the police authorities.

10. Be that as it may be, but it is settled in law that even where criminal proceedings are pending parallelly, then also arbitration proceedings can continue unless the criminal allegation is of such a nature that it amounts to an allegation *in rem*, but where the criminal action or criminality alleged by one party against the other party is criminality alleged *in personam* then the arbitration proceedings cannot be scuttled.

11. In *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1, it was held as under :-

62. Dr D.Y. Chandrachud, J. in his concurring judgment [Ed. : The opinion authored by Sikri, J. in *A. Ayyasamy*, (2016) 10 SCC 386, is also signed by Chandrachud, J. Chandrachud, J. delivered a supplementing opinion as well.] unclasped the mandatory nature of Section 8 of the Arbitration Act to observe that allegations of fraud can be made a subject-matter of arbitration by relying on *Russell on Arbitration*, *Redfern and Hunter on International Arbitration* and *Gary B. Born in International Commercial Arbitration*. Reliance was placed on the principle of separation and legal effect of the doctrine of competence-competence, to observe : (*A. Ayyasamy case* [*A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79], SCC p. 414, para 44)

“44. ... ‘13. Once an application in due compliance with Section 8



of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law — *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.’ [Ed. : As observed in *Sundaram Finance Ltd. v. T. Thankam*, (2015) 14 SCC 444, at p. 449, para 13.]”

“43. Hence, the allegations of criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.” (*A. Ayyasamy case [A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79], SCC p. 414, para 43)”

12. Recently, similar was held in *Managing Director Bihar State Food and Civil Supply Corporation Limited and Another Versus Sanjay Kumar*, 2025 SCC Online SC 1604. In *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.* 2021 (4) SCC 713, it was clarified that commercial frauds between private parties remain arbitrable, and only frauds affecting public funds or involving elements of public law are not.

13. Therefore, this Court deems it fit to appoint an arbitrator into the matter. This Court appoints *Justice Shri K.K. Trivedi, Former Judge of High of M.P. Jabalpur* as sole arbitrator to adjudicate upon the dispute between the parties.

14. The Register (Judicial-I) of this Court shall obtain the necessary consent and disclosure of the learned arbitrator within 10 days and not later



than by 24.04.2026.

15. If the consent and disclosure of the arbitrator is not received by 24.04.2026 then the case be listed on 27.4.2026 and in case, the consent and disclosure is received then the case be treated as disposed off.

16. The Parties shall appear before the learned arbitrator firstly, on 28.04.2026 and on the such other further dates, as may directed by the learned Arbitrator.

17. Accordingly, this application is **allowed and disposed off**.

**(VIVEK JAIN)**  
**JUDGE**

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